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**Before the
Federal Communications Commission
Washington, DC 20566**

In the Matter of Acceleration of Broadband Deployment: Expanding the reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting	WC Docket No. 11-59
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City of Scottsdale, Arizona's Reply to Comments of NextG Networks & PCIA

The City of Scottsdale, Arizona hereby submits its reply to comments submitted by NextG Networks and the PCIA in relation to its dealings with the City of Scottsdale, Arizona.

1. The City of Scottsdale Has Been a Leader in Fostering New Wireless Telecommunications Installations.

Throughout its history, the City of Scottsdale has been cooperative and receptive to wireless communication facilities. As a municipal corporation, the City has spent millions of dollars acquiring various real property interests, and the City also spends millions of dollars annually managing and maintaining those interests. Included among the City's real estate interests are hundreds of miles of linear property rights which are commonly referred to as "right-of-way" or "ROW."

The City frequently makes its right-of-way available to various utility providers, including but not limited to local exchange carriers, cable television providers, electricity providers, and wireless communication facility providers. Prior to 1995, the City did not have any wireless communication facilities ("WCF") in its ROW. In 1995, the Scottsdale City Council approved WCF in ROW agreements with predecessor companies to what are now Verizon and Alltel.

Subsequent to these initial license agreements, the City recognized that additional mobile phone service providers had interest in utilizing the City's ROW assets for expansion of their respective wireless phone networks. In 2001, the City formed a "wireless ideas team" with the goal of examining City development and zoning policies with respect to WCF.¹ The wireless ideas team consisted of designated members of City staff, representatives of the wireless communication industry, and interested Scottsdale citizens. After twenty-six (26) months of meetings, discussions, and public outreach, a proposal was brought forward for consideration by the Scottsdale City Council. Thus, in March, 2003, the City updated the Scottsdale Zoning Ordinance Section 7.200(H), which enacted various zoning and other regulations that facilitated the ability of wireless providers to utilize City ROW while maintaining the City's ability to reasonably regulate the use thereof.

The City Council also adopted a policy of requiring providers with WCF in the ROW to pay an annual charge for the use of the City's land. As originally adopted, the annual fee was a single set fee regardless of the size of the facility. This fee underwent annual adjustments and was set at the amount of \$8,475 per year for the City's fiscal year of 2008/2009. After adoption of the City's new wireless ordinance, several additional providers sought and obtained permission from the City to install WCF in the ROW.

During the 2008/2009 fiscal year, the City was approached by NewPath Networks, LLC and requested to re-examine its annual fee schedule for WCF in light of, among other things, changing technology applications in the industry. In the spring of 2009, City staff reviewed the City's annual fees for WCF in the ROW. This review included, but was not limited to, informal surveys of other jurisdictions around the country, review of a survey of WCF site charges for jurisdictions in Maricopa County previously commissioned by the City's asset management department, and input from industry stakeholders. NextG was also invited by the City to participate in the evaluation process.

Ultimately, the City Council adopted a revised fee schedule on June 2, 2009 which represented multiple categories of WCF facilities and was designed to encourage certain installations, such as use of existing vertical assets, while allowing providers to maintain economic feasibility. Following enactment of the revised fee schedule, the City has approved many new WCF installations in the ROW including several for NewPath Networks, LLC which, to the City's knowledge, is also an installer of Distributed Antenna Systems ("DAS") for lease or other utilization by other CMRS providers.

As noted above, the City expends millions of dollars for things such as ROW acquisition, ROW maintenance, and ROW management. The City's annual encroachment charges for WCF providers help raise revenue for the City to provide these services on behalf of the public. WCF issues generally fall under the City's

¹ From time to time, the City also makes certain portions of its non-ROW real estate assets available to wireless providers for installation of antenna sites. These non-ROW sites are negotiated on a site-by-site basis through license agreements with the City.

Planning, Neighborhoods, and Transportation Department which, among other things, provides permitting and inspection services.

In addition to the City's sewer and water service, the City currently has several different providers which use portions of the ROW including 1) an electrical utility which pays the City approximately \$6.6 million dollars annually in franchise fees; 2) the incumbent local exchange carrier; 3) a cable television service which pays the City approximately \$3.5 million dollars in annual franchise fees; 4) a natural gas utility which pays approximately \$1.2 million dollars in annual franchise fees; and several WCF providers which pay the annual licensing fee for use of the City's property. In addition, the City has other underground telecommunications providers which pay fees for use of the City's ROW as well.

In summary, the City is responsible for acquiring, owning and managing hundreds of miles of ROW with a host of different utilities and other businesses competing with the City's own water and sewer facilities for a finite availability of space. The City is charged with maintaining a delicate balance of cooperation among these users of the ROW. The City spends millions of dollars doing so and it is not unreasonable for the City to be able to move these costs from the taxpayers to those who are actually using the ROW. Most users of the ROW pay for the right to use the limited available space. In fact, many WCF providers voluntarily seek use of the ROW rather than pursuing private property options because they find that the City's ROW is more cost efficient. With that background and further discussion below, this Commission should be able to easily understand why the comments of NextG and the PCIA are not well taken.

2. The City of Scottsdale Has Reasonable Regulation Which is Not a Barrier to Entry.

NextG's problems appear to arise not from municipal regulation but rather from inconsistencies regarding the nature of its service. In its comments to this Commission (p. 5), NextG styles itself as a wireline carrier and compares itself to competitive local exchange carriers. However, it expressly disclaims providing local exchange service in other documents it has filed. (See, e.g., NextG application for CCN with Arizona Corporation Commission, Exhibit A.) It is also worthy to note that the City of Scottsdale currently has over 200 wireless communication facilities ("WCF") in its ROW in addition to multiple sites on City-owned property such as parks, ball fields, water tanks, and light poles. Even more interesting is the fact that Crown Castle/New Path (which NextG identifies as its competition in the DAS industry) is the licensee for the majority of the WCF located in the City's ROW.

Other comments by NextG which cannot be harmonized with its various legal and regulatory filings should also be noted by this Commission. As explained by the PCIA, "the FCC has recognized that DAS networks provide wireless service." (Comments of PCIA - The Wireless Infrastructure Association and the DAS Forum, p. 13, n. 56 (*citing* the NOI, 26 FCC Rcd at 5393 ¶ 24, n. 37).) NextG is a self-styled DAS provider but claims that it is regulated by at least 35 state public utility commissions or their equivalent. (Comments of NextG Networks, p. 5.) However, state public utility

regulation of wireless service is largely preempted by the Federal Telecommunications Act. 47 U.S.C. § 332(c)(3). This Commission should inquire why this company that claims to be a DAS wireless provider is registering with state public utility commissions rather than this Commission as required by 47 U.S.C. § 309 *et seq.*

3. NextG Is Its Own Barrier.

NextG's problems also appear to stem from a business model which premises its success on a faulty assumption of a right to use municipal property without paying fair compensation. The City is aware of no other industry which adopts such an illogical approach to development. Congress made it patently clear that municipal governments are not required to give away their property. Instead, Congress specifically preserved the right of municipalities to charge for use of their property:

(c) State and local government authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or **to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way** on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

47 U.S.C.A. § 253 (emphasis supplied). Congress further confirmed its intention not to interfere with municipal revenues when it adopted § 601 of the Federal Telecommunications Act of 1996:

(c)(2) STATE TAX SAVINGS PROVISION.--Notwithstanding paragraph (1), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation

Thus, when NextG complains that it has to pay reasonable compensation for use of the City's property, its complaints should be disregarded by this Commission. In fact, in the litigation filed by NextG against the City of Scottsdale, NextG expressly declined to assert any claims under federal law that the City was a barrier to entry. (Exhibit B, NextG Motion for Voluntary Dismissal.)

4. The F.C.C. Does Not Have Jurisdiction Over State Statutes.

This Commission should also decline NextG's implied invitation to examine and interpret state statutes. NextG suggests that the City of Scottsdale is not following an Arizona Statute (A.R.S. § 9-582) when it charges for WCF in its ROW. (NextG Comments, p. 15.) Even if this Commission had authority to interpret the Arizona Revised Statutes, it would see that NextG has failed to provide the Commission with the complete analysis. While Arizona's limited statutory scheme is aimed at providing a competitive balance between CLEC's and ILEC's, NextG's service does not fall within

the narrow definitions of the Arizona scheme which expressly exempts commercial mobile radio service ("CMRS") from its inclusion. A.R.S. § 9-581(4). In this context, NextG's chameleon-like approach to dealing with regulatory authorities is amplified. To the Arizona Corporation Commission, NextG described its service as follows:

RF Transport Services connect Customer-provided wireless capacity equipment to Customer or Company-provided bi-directional RF-to-optical conversion equipment at a hub facility. The hub facility can be Customer- or Company-provided. The conversion equipment allows the Company to accept **RF [radio frequency]** from the Customer and then send bi-directional traffic transmission across the appropriate optical networks. At the remote end, Customer- or Company-provided **RF [radio frequency]-to-optical** conversion equipment allows bi-directional conversion between optical signals and RF signals. **RF signals can be received and radiated at this remote node. . . .**

(Exhibit A, NextG Application and Petition for Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services, Attachment B, Sheet No. 5). In a letter to the City of San Francisco, NextG similarly described its services:

NextG is a facilities-based provider of protocol-agnostic, fiber-aggregated optical-to-radio frequency ("RF") conversion and microcellular repeater services. NextG makes its services available to any wireless carrier that wishes to purchase them to transport wireless voice and data transmissions between the carrier's BTS and the fiber-fed microcell nodes and associated antennae. NextG's services amplify and extend wireless carriers' RF signals in difficult coverage areas.

(Exhibit C, NextG letter to City of San Francisco.) These describe what plainly appears to be a commercial mobile radio service as set forth by this Commission in 47 C.F.R. Part 20. Therefore, when NextG filed a lawsuit against the City of Scottsdale claiming rights under A.R.S. § 9-582, the City quickly pointed out that commercial mobile radio services were not included within the statutory scheme of § 9-581 *et seq.* Rather than admit the defect in its claim under the state statute, NextG instead filed a declaration from its chief technology officer essentially stating that the other employees misunderstood NextG's service.

7. NextG does not transmit or receive wireless radio frequency transmissions. Rather, NextG's customers control the wireless transmissions. In the case of a communication coming into a Node from a retail wireless device, NextG's customer hands off the signal at the Node equipment and NextG converts the RF signal to light waves and transports the communications through NextG's fiber optic network to a distant point that is typically, but not always, an aggregation point for NextG's communications called a "Base Station" (or "hub"). The Base Station is a central location that contains such equipment as routers, switches, and signal conversion equipment. The Base Station typically is part of the customer's network and is typically installed in a building located on

private property. NextG converts the light waves back to RF signals and hands the communication signals back to its customer at the Base Station, where the communications signals are received by the customer's network. Signals going in the opposite direction (*i.e.* originating at the Base Station and going out) follow the same path only reversed. NextG's service is the transmission from the Base Station to the Node. NextG's customer controls transmission of the wireless radio frequency signal from the antenna out to its customers.

8. All wireless transmissions are performed by NextG's customers, who control and are responsible for their licensed proprietary spectrum. Although NextG's service and network incorporates wireless reception devices, NextG is not a wireless or commercial mobile radio service ("CMRS") provider. NextG does not hold or control any wireless spectrum licenses from the FCC.

(Exhibit D, Declaration of David Cutrer.)

The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

47 U.S.C.A. § 153 (emphasis supplied); see also ***National Cable & Telecommunications Ass'n v. Brand X Internet Services***, 545 U.S. 967, 990, 125 S.Ct. 2688, 2704 (2005). The only reason for having an antenna is to transmit and receive radiofrequency signals. If the sworn testimony of NextG's Co-Founder and Chief Technology Officer is believed, NextG does not transmit radiofrequency signals. Hence, this Commission would have to be puzzled as to why NextG is even concerned with issues of antenna placement in accordance with local zoning.² Nevertheless, the City recognizes that the sworn testimony of NextG's Chief Technology Officer in the state court proceedings is entirely inconsistent with NextG's position taken with this Commission that it is a wireless service provider. Therefore, the Commission will have to make its own determination of that issue.³ However, the Commission should at least understand why NextG's shell game may cause problems that telecommunications providers who take a straightforward, honest approach to working with local jurisdictions do not experience.

In reality, NextG's dealings with the City of Scottsdale are illustrative of its own problems. NextG's first formal communication to the City of Scottsdale was sprinkled with a threatening tone and thinly-veiled threats of litigation. NextG then indicated that it hoped to construct four antenna sites in the City's ROW along with installation of fiber optic cable on behalf of a major wireless provider in the area. The City provided NextG

² It is also worthwhile to note that NextG has never submitted an application for a WCF site location in the City of Scottsdale.

³ In this respect, the City requests that the Commission formally recognize that DAS providers are a commercial mobile radio service.

with an outline of the process to be followed and application paperwork for the same. NextG never bothered to even try following the process and never submitted an application. Instead, it chose to file legal action after languishing for several months and misrepresenting its services to the City. Even after litigation was filed, City staff arranged for a meeting to discuss proposed antenna sites with NextG representatives. NextG then cancelled that meeting. Ultimately, the wireless provider with whom NextG had contracted abandoned NextG and decided to build a site on its own. This site was approved and permitted within thirty-five days of the application being filed.⁴

This new macro site is just one of approximately 285 different macro sites within the City along with 247 DAS antenna nodes. Of the macro sites within the City, there are approximately 60 located either wholly or partially in the City's ROW and another 15 located on other City-owned land. Each major wireless carrier has a site in the City's ROW. Of the 247 DAS antenna nodes, 162 are located in the City's ROW and 85 are located on private property. Examining these numbers, it is difficult to see how the City of Scottsdale could ever be viewed by this Commission as a barrier to entry – the threshold set by Congress for any interference with the right of local jurisdictions to regulate their own rights-of-way and exercise their zoning power.⁵

5. PCIA's References to the City of Scottsdale are Misguided.

As set forth above, Scottsdale has in excess of 200 WCF in its ROW and another 240 plus sites outside of the ROW. Consequently, the Commission should view with suspicion PCIA's inclusion of Scottsdale in its examples of problem jurisdictions. A correct factual analysis reveals that the PCIA exhibits consist more of fear-mongering than barriers to entry. PCIA cites Scottsdale as a jurisdiction having an ordinance which may require payment of a consultant for technical review of the proposed site on behalf of the City. (PCIA Comments, Exhibit A.) However, PCIA fails to inform this Commission that the ordinance is discretionary and the City has never actually used the ordinance to require a WCF provider to pay for a consultant on behalf of the City. Similarly, PCIA refers to Scottsdale's ordinance which prevents co-location on an existing non-conforming use. (PCIA comments, Exhibit B.) Leaving aside the fact that this kind of local discretion is exactly what Congress had in mind when it adopted 47 U.S.C. § 332(c)(7) to preserve local zoning authority, PCIA fails to identify a single instance where the ordinance has acted as a barrier to entry.⁶

Finally, the City feels compelled to respond to the suggestion in PCIA's comments that Scottsdale and other jurisdictions simply use citizen complaints as a basis to prevent wireless sites. To the contrary, Scottsdale has approved multiple WCF sites in its ROW despite strong opposition from the residents. In each case, City staff

⁴ At the same time, NextG's competitor, Crown Castle continued its cooperative work with the City and successfully obtained permitting for numerous WCF sites in the City's ROW.

⁵ Scottsdale was actually a pioneering jurisdiction when it entered an agreement with U.S. West New Vector in 1995 for the installation of 15 macro antenna sites in the City's ROW.

⁶ In reality, Scottsdale is currently reviewing this aspect of its zoning ordinance and the Council will likely consider an amendment to allow co-location on existing non-conforming uses in the upcoming months.

worked with the applicant, and the City's Development Review Board, comprised of citizens, approved a location which resulted in the applicant's ability to provide service through the least intrusive means, i.e., the balance between local zoning and technology deployment envisioned by Congress was fulfilled.

In summary, the comments of NextG and PCIA appear directed to frustrate Congressional intent rather than further it. The Telecommunications Act of 1996 is designed to strike a balance between increased telecommunications deployment and maintaining the integrity of local jurisdictions. The function of this Commission is to further the intent of Congress as set forth in the Act. The proposed regulations advocated by the PCIA are offered as a means for the industry to frustrate the preservation of local authority as envisioned by the Act. This Commission should remain true to its function as directed by Congress and decline the industry's invitation to adopt regulations which would clearly be contrary to the Act and the intent of Congress.

Respectfully submitted this 23rd day of September, 2011.

City of Scottsdale, Arizona



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Assistant City Attorney

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Counsel for City of Scottsdale

EXHIBIT “A”

ORIGINAL

NEW APPLICATION



0000020858

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July 1, 2005

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Arizona Corporation Commission

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RECEIVED

**Re: Application and Petition for Certificate of Convenience and Necessity of
NextG Networks of California, Inc., d/b/a NextG Networks West**

Dear Sir or Madam:

Enclosed please find for filing an original and thirteen (13) copies of the Application and Petition for Certificate of Convenience and Necessity of NextG Networks of California, Inc., d/b/a NextG Networks West ("NextG").

I have also enclosed an extra copy of this letter and the application to be date stamped and returned to me in the enclosed, self-addressed, postage prepaid envelope. If you have any questions, please call me at the above telephone number.

Sincerely,

Scott Thompson

Danielle Frappier

Counsel for Applicant

NextG Networks of California, Inc., d/b/a NextG Networks West

Encl.

192326_1.DOC

(A-2) The name, address, telephone number (including area code), facsimile number (including area code), e-mail address, and World Wide Web address (if one is available for consumer access) of the Applicant:

Name & Address:
NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Telephone: (408) 719-8510
Facsimile: (408) 719-8650
Email address:
arodriguez@nextgnetworks.net
Web Site Address:
<http://www.nextgnetworks.net/index2.htm>

After July 18, 2005:
2216 O'Toole Ave.
San Jose, CA, 95131
Telephone: (408) 954-1580
Facsimile: (408) 383-5397

(A-3) The d/b/a ("Doing Business As") name if the Applicant is doing business under a name different from that listed in Item (A-2):

Applicant will be doing business in Arizona as NextG Networks West.

(A-4) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Management Contact:

Management Contact:
Anthony Rodriguez
Regulatory and Contracts Specialist
NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Telephone: (408) 719-8510
Facsimile: (408) 719-8650
Email address:
arodriguez@nextgnetworks.net

After July 18, 2005:
2216 O'Toole Ave.
San Jose, CA, 95131
Telephone: (408) 954-1580
Facsimile: (408) 383-5397

(A-5) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Attorney and/or Consultant:

Attorney:
T. Scott Thompson
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Ave., Suite 200
Washington, D.C. 20006

Telephone: (202) 659-9750
Facsimile: (202) 452-0067
Email address: sthompson@crblaw.com

ARIZONA CORPORATION COMMISSION

Application and Petition for Certificate of Convenience and Necessity to Provide
Intrastate Telecommunications Services

Mail original plus 13 copies of completed application to:

For Docket Control Only:
(Please Stamp Here)

Docket Control Center
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927

Please indicate if you have current applications pending
in Arizona as an Interexchange reseller, AOS provider,
or as the provider of other telecommunication services.

Type of Service: N/A

Docket No.: _____ Date: _____

Date Docketed: _____

Type of Service: N/A

Docket No.: _____ Date: _____

Date Docketed: _____

A. COMPANY AND TELECOMMUNICATION SERVICE INFORMATION

(A-1) Please indicate the type of telecommunications services that you want to provide in Arizona and answer the appropriate numbered items:

☐

Resold Long Distance Telecommunications Services (Answer Sections A, B).

☐

Resold Long Exchange Telecommunications Services (Answer Sections A, B, C).

☐

Facilities-Based Long Distance Telecommunications Services (Answer Sections A, B, D).

☐

Facilities-Based Local Exchange Telecommunications Services (Answer Sections A, B, C, D, E).

☐

Alternative Operator Services Telecommunications Services (Answer Sections A, B).

☒

Other (Please attach complete description) transport and backhaul services, to other carriers, including but not limited to wireless telecommunications services providers and potentially to wireless information services providers; please see description of service provided at Attachment E

(A-6) The name, address, telephone number (including area code), facsimile number (including area code), E-mail address of the Applicant's Complaint Contact Person:

Complaint Contact:
Anthony Rodriguez
Regulatory and Contracts Specialist
NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Telephone: (408) 719-8510
Facsimile: (408) 719-8650
Email address:
arodriguez@nextgnetworks.net

After July 18, 2005:
2216 O'Toole Ave.
San Jose, CA, 95131
Telephone: (408) 954-1580
Facsimile: (408) 383-5397

(A-7) What type of legal entity is the Applicant?

☐

Sole proprietorship

☐

Partnership: ____ Limited, ____ General, ____ Arizona, ____ Foreign

☐

Limited Liability Company: ____ Arizona, ____ Foreign

☒

Corporation: ____ "S", X "C", ____ Non-profit

☐

Other, specify: _____

(A-8) Please include "Attachment A":

Attachment "A" must include the following information:

1. A copy of the Applicant's Certificate of Good Standing as a domestic or foreign corporation, LLC or other entity in the State of Arizona.
2. A list of the names of all owners, partners, limited liability company managers (or if a member managed LLC, all members), or corporation officers and directors (specify).
3. Indicate percentages of ownership of each person listed in A-8.2.

(A-9) Include your Tariff as "Attachment B".

Your Tariff must include the following information:

1. Proposed Rates and Charges for each service offered (reference by Tariff page number).
2. Tariff Maximum Rate and Prices to be charged (reference by Tariff page number).
3. Terms and Conditions Applicable to provision of Service (reference by Tariff page number).
4. Deposits, Advances, and/or Prepayments Applicable to provision of Services (reference by Tariff page number).
5. The proposed fee that will be charged for returned checks (reference by Tariff page number).

Proposed Rates and Charges: Tariff Original Sheets 6 & 9

Tariff Maximum Rate and Prices: Tariff Original Sheets 6 & 9

Terms and Conditions: Tariff Original Sheets 5-16

Deposits: Tariff Original Sheets 10 & 14 (no advances or prepayments are required, unless otherwise provided under Individual Case Basis, special promotions or special construction arrangements)

No fee will be charged for returned checks, unless otherwise provided under Individual Case Basis, special promotions or special construction arrangements

(A-10) Indicate the geographic market to be served:



Statewide. (Applicant adopts statewide map of Arizona provided with this application).
See attached copy of map



Other. Described and provide a detailed map depicting the area.

(A-11) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency, or law enforcement agency.

Describe in detail any such involvement. Please make sure you provided the following information:

1. States in which the Applicant has been or is involved in proceedings.
2. Detailed explanations of the Substance of the Complaints.
3. Commission Orders that resolved any and all Complaints.
4. Actions taken by the Applicant to remedy and/or prevent the Complaints from re-occurring.

With the one exception involving the City of San Francisco described below, neither Applicant nor any officer, director, partner or manager of the Applicant has been or is currently involved in any formal or informal complaint proceeding pending before any state or federal regulatory commission, administrative agency, or law enforcement agency.

On March 9, 2005, the City of San Francisco filed a "complaint" against NextG before the California Public Utilities Commission ("CPUC"). The City's complaint asserts, essentially, that NextG should not have been granted a certificate of public convenience and necessity by the CPUC because, the City alleges, NextG's service does not fall within the statutory categories for which such certificates are granted. The City's complaint is a response to an ongoing dispute between NextG and the City over the fact that the City has denied NextG's ability to construct in the public rights-of-way, which violates NextG's franchise under California Public Utilities Code § 7901 and Section 253 of the federal Communications Act. NextG filed a complaint against the City in federal district court on February 11, 2005 in the Northern District of California (Civ 05-0658). NextG strenuously denies that there is any merit to the City's complaint, and is vigorously opposing the complaint. In any event, the dispute between NextG and the City of San Francisco is not relevant to NextG's qualification to hold a certificate in Arizona.

A-12) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

Describe in detail any such judgments or convictions. Please make sure you provided the following information:

1. States involved in the judgments and/or convictions.
2. Reasons for the investigation and/or judgment.
3. Copy of the Court order, if applicable.

No officer, director, partner or manager of the applicant has been or is currently involved in any civil or criminal investigation, has had any judgments entered in any civil matter, has had any judgments levied by any administrative or regulatory agency, or has been convicted of any criminal acts within the last ten (10) years.

(A-13) Indicate if the Applicant's customers will be able to access alternative toll service providers or resellers via 1+101XXXX access.

☐ Yes

☒ No

Not applicable because applicant's service does not provide access to toll providers or resellers. Please refer to the service description at Attachment E for a more complete explanation of NextG's service.

(A-14) Is applicant willing to post a Performance Bond? Please check appropriate box(s).

☐

For Long Distance Resellers, a \$10,000 bond will be recommended for those resellers who collect advances, prepayments or deposits.

☐

Yes

☒

No

If "No", continue to question (A-15).

☐

For Long Distance Exchange Resellers, a \$25,000 bond will be recommended.

☐

Yes

☒

No

If "No", continue to question (A-15).

☐

For Facilities-Based Providers of Long Distance, A \$100,000 bond will be recommended.

☐

Yes

☒

No

If "No", continue to question (A-15).

☐

For Facilities-Based Providers of Local Exchange, A \$100,000 bond will be recommended.

☐

Yes

☒

No

If "No", continue to question (A-15).

Note: Amounts are cumulative if the Applicant is applying for more than one type of service.

Not applicable because applicant does not propose to provide long distance or local exchange services in Arizona. As a result, applicant does not believe that it is necessary for it to post a performance bond. Applicant is willing to discuss the matter with the Commission, however, should it determine that a bond may be necessary.

(A-15) If No to any of the above, provide the following information. Clarify and explain the Applicant's deposit policy (reference by tariff page number). Provide a detailed explanation of why the applicant's superior financial position limits any risk to Arizona consumers.

NextG believes that a bond is not necessary due to the fact that it will be providing its service only other carriers, not to individuals or small businesses. NextG's carrier customers are sophisticated businesses with the incentive and adequate contractual and other means to ensure that NextG provides its service at a high level of service quality. Moreover, NextG's superior financial position further ensures that the lack of a bond poses no risk to Arizona consumers. NextG will rely on the financial resources of its parent company, NextG Networks, Inc. The ample financial backing of the parent company provides an additional assurance that the applicant need not post a performance bond.

NextG's deposit policy, found at Original Sheet 10 of its tariff, provides that "[d]eposits will be refunded with interest within 30 days after discontinuance of service or after 12 months of service, whichever comes first, except where the Customer has been delinquent in the payment of a bill or where the deposit has been applied to the closing bill upon discontinuance of service."

(A-16) Submit copies of affidavits of publication that the Applicant has, as required, published legal notice of the Application in all counties where the applicant is requesting authority to provide service.

Note: For Resellers, the Applicant must complete and submit an Affidavit of Publication Form as Attachment "C" before Staff prepares and issues its report. Refer to the Commission's website for Legal Notice Material (Newspaper Information, Sample Legal Notice and Affidavit of Publication). For Facilities-Based Service Providers, the Hearing Division will advise the Applicant of the date of the hearing and the publication of legal notice. Do not publish legal notice or file affidavits of publication until you are advised to do so by the Hearing Division.

Applicant will file the Affidavit of Publication after this application has been filed, as advised by Commission staff.

(A-17) Indicate if the Applicant is a switchless reseller of the type of telecommunications services that the Applicant will or intends to resell in the State of Arizona:

☐

Yes

☒

No

If "Yes," provide the name of the company or companies whose telecommunications services the Applicant resells.

(A-18) List the States in which the Applicant has had an application approved or denied to offer telecommunications services similar to those that the Applicant will or intends to offer in the State of Arizona:

Note: If the Applicant is currently approved to provide telecommunications services that the Applicant intends to provide in Arizona in less than six states, excluding Arizona, list the Public Utility Commission ("PUC") of each state that granted the authorization. For each PUC listed provide the name of the contact person, their phone number, mailing address including zip code, and e-mail address.

Applicant's parent, through subsidiaries like the applicant, has been authorized to offer its service in the following states: California, District of Columbia, Florida, Georgia, Illinois, Maryland, Nevada, New Jersey, New York, North Carolina, Pennsylvania, Texas, Virginia and Wisconsin. It has not had any application to provide its service denied in any state.

(A-19) List the States in which the Applicant currently offers telecommunications services similar to those that the Applicant will or intends to offer in the State of Arizona:

Note: If the Applicant currently provides telecommunications services that the Applicant intends to provide in Arizona in six or more states, excluding Arizona, list the states. If the Applicant does not currently provide telecommunications services that the Applicant intends to provide in Arizona in five or less states, list the key personnel employed by the Applicant. Indicate each employee's name, title, position, description of their work experience, and years of service in the telecommunications services industry.

NextG currently offers its service in California, Georgia and Illinois. Descriptions of key personnel are provided in Attachment F.

(A-20) List the names and addresses of any alternative providers of the service that are also affiliates of the telecommunications company, as defined in R14-2-801.

No affiliates of applicant provide the service NextG proposes to offer in Arizona.

B. FINANCIAL INFORMATION

(B-1) Indicate if the Applicant has financial statements for the two (2) most recent years.

☐

Yes

☒

No

If "No," explain why and give the date on which the Applicant began operations.

Applicant will rely on the financial resources of its parent company, NextG Networks, Inc. The parent, however, is a private company and its financials are highly confidential, proprietary information that are not made public. Therefore, NextG has not provided the financial information requested at this time. NextG can provide such information to the Commission upon the execution of a non-disclosure agreement with the Commission that provides for the confidential treatment of its financials.

NextG began offering service in California on July 21, 2004 and has continued to expand its operations to other states.

(B-2) Include "Attachment D."

Provide the Applicant's financial information for the two (2) most recent years.

1. A copy of the Applicant's balance sheet.
2. A copy of the Applicant's income statement.

3. A copy of the Applicant's audit report.
4. A copy of the Applicant's retained earnings balance.
5. A copy of all related notes to the financial statements and information.

Note: Make sure "most recent years" includes current calendar year or current year reporting period.

Please see applicant's response to question B-1 above.

(B-3) Indicate if the Applicant will rely on the financial resources of its Parent Company, if applicable.
Applicant will rely on the financial resources of its parent company, NextG Networks, Inc.

- (B-4) The Applicant must provide the following information.
1. Provide the projected total revenue expected to be generated by the provision of telecommunications services to Arizona customers for the first twelve months following certification, adjusted to reflect the maximum rates for which the Applicant requested approval. Adjusted revenues may be calculated as the number of units sold times the maximum charge per unit.
 2. Provide the operating expenses expected to be incurred during the first twelve months of providing telecommunications services to Arizona customers following certification.
 3. Provide the net book value (original cost less accumulated depreciation) of all Arizona jurisdictional assets expected to be used in the provision of telecommunications service to Arizona customers at the end of the first twelve months of operation. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.
 4. If the projected value of all assets is zero, please specifically state this in your response.
 5. If the projected fair value of the assets is different than the projected net book value, also provide the corresponding projected fair value amounts.

Please see applicant's response to question B-1 above.

C. RESOLD AND/OR FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES.

(C-1) Indicate if the Applicant has a resale agreement in operation,

☐

Yes

☒

No

If "Yes," please reference the resale agreement by Commission Docket Number or Commission Decision Number.

Not applicable. Applicant will not provide local exchange telecommunications services. See service description at Attachment E.

**D. FACILITIES-BASED LONG DISTANCE AND/OR FACILITIES BASED LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES**

(D-1) Indicate if the Applicant is currently selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in the State of Arizona. This item applies to an Applicant requesting a geographic expansion of their CC&N:

☐

Yes

☒

No

If "Yes," provide the following information.

1. The date or approximate date that the Applicant began selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services for the State of Arizona.
2. Identify the types of facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services the Applicant sells in the State of Arizona.

If "No," indicate the date when the Applicant will begin to sell facilities-based long distance telecommunications AND/OR facilities-based local exchange telecommunications services in the State of Arizona:

Not applicable. Applicant will not provide long distance or local exchange telecommunications services. See service description at Attachment E.

(D-2) Check here if you wish to adopt as your petition a statement that the service has already been classified as competitive by Commission Decision:

☐

Decision # 64178 Resold Long Distance

☐

Decision # 64178 Resold LEC

☐

Decision # 64178 Facilities Based Long Distance

☐

Decision # 64178 Facilities Based LEC

Applicant hereby petitions the Commission to find that its service is competitive because it is a point-to-point transport and backhaul private line telecommunications service leased on a long-term basis, similar to the private line services offered on a competitive basis by other telecommunications providers in Arizona. See *In Re Application of OnFiber Carrier Services, Inc.*, Opinion and Order, Docket No. T-03874A-03-0766 (Ariz. Corp. Comm'n June 25, 2004). A more detailed description of Applicant's service is provided at Attachment E.

E. FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES.

(E-1) Indicate whether the Applicant will abide by the quality of service standards that were approved by the Commission in Commission Decision Number 59421:

☐

Yes

☒

No

Not applicable. Applicant will not provide local exchange telecommunications services. See service description at Attachment E.

(E-2) Indicate whether the Applicant will provide all customers with 911 and E911 service, where available, and will coordinate with incumbent local exchange carriers ("ILECs") and emergency service providers to provide this service:

☐

Yes

☒

No

Not applicable. Applicant will not provide local exchange telecommunications services. See service description at Attachment E.

(E-3) Indicate that the Applicant's switch is "fully equal access capable" (i.e., would provide equal access to facilities-based long distance companies) pursuant to A.A.C. R14-2-1111 (A):

☐

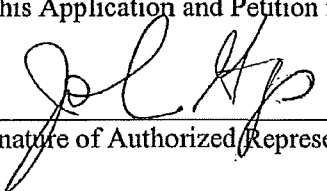
Yes

☒

No

Not applicable. Applicant will not provide local exchange telecommunications services. See service description at Attachment E.

I certify that if the applicant is an Arizona corporation, a current copy of the Articles of Incorporation is on file the Arizona Corporation Commission and the applicant holds a Certificate of Good Standing from the Commission. If the company is a foreign corporation or partnership, I certify that the company has authority to transact business in Arizona. I certify that all appropriate city, county, and/or State agency approvals have been obtained. Upon signing of this application, I attest that I have read the Commission's rules and regulations relating to the regulations of telecommunications services (A.A.C. Title 14, Chapter 2, Article 11) and that the company will abide by Arizona state law including the Arizona Corporation Commission Rules. I agree that the Commission's rules apply in the event there is a conflict between those rules and the company's tariff, unless otherwise ordered by the Commission. I certify that to the best of my knowledge the information provided in this Application and Petition is true and correct.


(Signature of Authorized Representative)

(Date)

2/14/2005

John B. Georges

(Print Name of Authorized Representative)

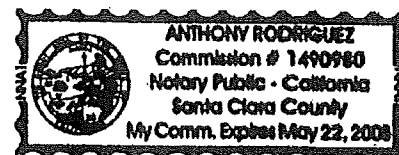
Chairman/CEO/President

(Title)

SUBSCRIBED AND SWORN to before me this 14th day of February, 2005


NOTARY PUBLIC

My Commission Expires May 22, 2008



**NEXTG APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS
SERVICES**

ATTACHMENT A

A-8(1) Please find attached a copy of NextG's Certificate of Good Standing as a foreign corporation in the State of Arizona.

A-8(2) NextG Corporate Officers and Directors

NAME	POSITION
John B. Georges	Chairman/CEO/President
David Cutrer	Vice President/Chief Technology Officer
Tom Kais	Treasurer
J. Casey McGlynn	Secretary
Ronald S. Kramer	Assistant Secretary

A-8(3) The applicant is a wholly-owned subsidiary of its parent, NextG Networks, Inc. Thus, none of the officers or directors listed above own any shares in the applicant.

STATE OF ARIZONA



Office of the CORPORATION COMMISSION

CERTIFICATE OF GOOD STANDING

To all to whom these presents shall come, greeting:

I, Brian C. McNeil, Executive Secretary of the Arizona Corporation Commission, do hereby certify that

*****NEXTG NETWORKS OF CALIFORNIA, INC.*****

a foreign corporation organized under the laws of Delaware did obtain authority to transact business in the State of Arizona on the 23rd day of December 2004.

I further certify that according to the records of the Arizona Corporation Commission, as of the date set forth hereunder, the said corporation has not had its authority revoked for failure to comply with the provisions of the Arizona Business Corporation Act; that its most recent Annual Report, subject to the provisions of A.R.S. sections 10-122, 10-123, 10-125 & 10-1622, has been delivered to the Arizona Corporation Commission for filing; and that the said corporation has not filed an Application for Withdrawal as of the date of this certificate.

This certificate relates only to the legal authority of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 1st Day of February, 2005, A. D.



EXECUTIVE SECRETARY

BY:

Yvonne McNeil

**NEXTG APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS
SERVICES**

ATTACHMENT B

Please find the applicant's tariff attached hereto.

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Title Sheet

Tariff Schedule Applicable to
RADIO FREQUENCY TRANSPORT AND BACKHAUL SERVICES
of
NEXTG NETWORKS OF CALIFORNIA, INC. D/B/A NEXTG NETWORKS WEST

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 1

CHECK SHEET

The Title Sheet and Sheets 1 through 17 inclusive of this tariff are effective as of the date shown at the bottom of the respective sheet(s).

<u>SHEET</u>	<u>REVISION</u>
Title	Original
1	Original
2	Original
3	Original
4	Original
5	Original
6	Original
7	Original
8	Original
9	Original
10	Original
11	Original
12	Original
13	Original
14	Original
15	Original
16	Original
17	Original

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 2

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Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 3

PRELIMINARY STATEMENT

This tariff contains all effective rates, tolls, rentals, charges and classifications, together with all related rules and regulations, relating and applicable to the operations of NextG Networks of California, Inc. d/b/a NextG Networks West ("NextG" or "Company") in Arizona.

The Company has been authorized by the Arizona Corporation Commission ("ACC") to provide radio frequency transport and backhaul services to commercial mobile radio service providers ("RF Transport Services").

The rates and rules contained herein are subject to change pursuant to the rules and regulations of the ACC.

EXPLANATION OF SYMBOLS

- (C) To signify **changed** listing, rule or condition which may affect rates or charges.
- (D) To signify **deleted or discontinued** rate, regulation or condition.
- (I) To signify a change resulting in an **increase** to a Customer's bill.
- (L) To signify that material has been **relocated** to another tariff location.
- (N) To signify a **new** rate, regulation condition or sheet.
- (R) To signify a change resulting in a **reduction** to a Customer's bill.
- (T) To signify a change in **text** but no change to rate or charge.

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 4

SERVICE AREA

The Company has been authorized by the ACC to provide its RF Transport Service throughout the state of Arizona.

APPLICABILITY

This tariff applies only for the use of the Company's RF Transport Services for communications between points within the State of Arizona.

AVAILABILITY OF THE COMPANY'S TARIFF

Complete copies of the Company's tariff are maintained at the following address:

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

1.0 RATES AND CHARGES

Schedule 1: RF Transport Services

1. Application of Rates

RF Transport Services rates apply to service furnished to business customers. RF Transport Services are not available to residential customers.

2. RF Transport Service

A. General Service Offerings and Limitations

RF Transport Services utilize optical technology, including multi-wavelength optical technology over dedicated transport facilities to provide Customers with links to radiate radio frequency ("RF") coverage.

RF Transport Services connect Customer-provided wireless capacity equipment to Customer- or Company-provided bi-directional RF-to-optical conversion equipment at a hub facility. The hub facility can be Customer- or Company-provided. The conversion equipment allows the Company to accept RF traffic from the Customer and then send bi-directional traffic transmission across the appropriate optical networks. At the remote end, Customer- or Company-provided RF-to-optical conversion equipment allows bi-directional conversion between optical signals and RF signals. RF signals can be received and radiated at this remote node. Hence, the Company provides optical transit services for RF signals.

The furnishing of RF Transport Services requires certain physical arrangements of equipment and facilities of the Company and other entities and is subject to the availability of such equipment and facilities and the economic feasibility of providing such necessary equipment and facilities and the RF Transport Services.

1.0 RATES AND CHARGES

Schedule 1: RF Transport Services (continued)

2. RF Transport Services (continued)

A. General Service Offerings and Limitations (continued)

1. The specific limitations applicable to RF Transport Services are as follows:
 - (a) All optical services are provided on single mode optical fiber.
 - (b) Some optical services may be of a multi-wavelength nature.
 - (c) Current wireless standards limit the distance between a hub site and a remote node to 20 km.
 - (d) The optical loss between a hub site and a remote node must not exceed 18 dB.

B. Maximum Initial Rates

Unless otherwise provided in a contract pursuant to Rule 4 below, the Maximum Initial Rates for RF Transport Services are as follows:

DESCRIPTION	FEE PER SEGMENT
Nonrecurring connection charge	\$100,000
Monthly recurring charge	\$15,000

A Segment is a one-way optical carrier between one (1) Customer hub site or remote node, and another Customer hub site or remote node. The optical carrier is a single optical wavelength. The optical fiber can carry more than one wavelength.

C. Minimum Term

The minimum service term for RF Transport Service is five (5) years.

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 7

1.0 RATES AND CHARGES

Schedule 2: Federal, State and Local Surcharges, Taxes and Fees

In addition to the charges for the Company's service offerings, certain federal, state, and local surcharges, taxes, and fees will be passed through to Customers to the extent permitted under applicable law. The surcharges, taxes and fees may be modified from time to time.

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 8

2.0 RULES

Rule 1 — Definitions

Commission or ACC:

Arizona Corporation Commission

Company:

NextG Networks of California, Inc. d/b/a NextG Networks West

Customer:

The person, firm, corporation or other entity that orders or uses the RF Transport Service and is responsible for payment of charges and compliance with the rules and regulations of this tariff.

Facilities:

Any cable, poles, conduit, carrier equipment, wire center distribution frames, central office switching equipment, etc., used to provide services offered under this tariff.

Business Day:

All days except Saturday, Sunday, New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day.

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

Rule 2 — Undertaking of Company

The Company's RF Transport Services are furnished for the provision of telecommunications services originating and/or terminating in any area within the State of Arizona.

The Company is a facilities-based provider of the RF Transport Service described in Schedule 1 to Customers for the direct transmission and reception of voice, data, and other types of communications. Services are offered via the Company's facilities (whether owned, leased, or under contract) in combination with telecommunications services provided by other carriers. The Company is responsible under the terms of this tariff only for the services and facilities the Company provides hereunder.

The Company's RF Transport Services are provided on a monthly basis unless otherwise provided, and are available twenty-four (24) hours per day, seven (7) days per week, subject to the availability of necessary service, equipment and facilities and the economic feasibility of providing such necessary service, equipment, and facilities.

Rule 3 — Application for Service

Service may be initiated based on a written or oral agreement between the Company and the customer. In either case, prior to the agreement, the customer shall be informed of all rates and charges for the services the customer.

To initiate a service request, the Customer must provide the following information: the Customer's name; an address to which the Company shall provide service; and a billing address (if different). The service application does not itself bind either the Customer to subscribe to the service or the Company to provide the service.

Request for service under this Tariff will authorize the Company to conduct a credit search on the Customer. The Company reserves the right to refuse service on the basis of credit history, and to refuse further service due to late payment or nonpayment by the Customer.

Rule 4 — Individual Case Basis, Special Promotions or Special Construction Contracts

The RF Transport Service is also available on a contract basis pursuant to Individual Case Basis ("ICB"), special promotions or special construction arrangements. The terms and conditions of each contract offering are subject to the agreement of both Customer and Company. Such contract offerings will be made available to similarly situated Customers in substantially similar circumstances. The contracts will be filed in accordance with Commission rules. Unless otherwise stated herein, the prices, terms and conditions of each ICB, special promotion or special construction contract will prevail over any contrary provision of this tariff.

Rule 5 — Deposits

The Company may, at its sole discretion, require a deposit as a condition to receiving service or additional service. The Company reserves the right to review an applicant's or a Customer's credit history at any time to determine if a deposit is required. Deposit requirements will not be based on race, sex, creed, national origin, marital status, age, number of dependents or physical handicap.

In the event the Customer fails to establish a satisfactory credit history, deposits are a form of security that may be required from Customers to ensure payment of bills.

Deposits shall be no greater than two-and-one-half (2.5) times the estimated maximum monthly bill.

Deposits will be refunded with interest within 30 days after discontinuance of service or after 12 months of service, whichever comes first, except where the Customer has been delinquent in the payment of a bill or where the deposit has been applied to the closing bill upon discontinuance of service.

Rule 6 — Notices

A. Discontinuance of Service Notice

1. Notice by Customers

Customers are responsible for notifying the Company of their desire to discontinue service on or before the date of disconnection. Such notice must be in writing.

2. Notice by Company

Notices by Company to Customers to discontinue service will be provided in accordance with Rule 9.

B. Rules for Company Notices

Notices the Company sends to Customers or the Commission are deemed made on date of actual presentation or upon deposit, first class postage prepaid, in the U.S. Mail to the Customer's or the Commission's last known address.

Rule 7 — Rendering and Payment of Bills

- A. Service is provided and billed on a monthly (30 day) basis. Months are presumed to have 30 days. The billing date is dependent on the billing cycle assigned to the Customer.

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 11

-
- B. The Customer is responsible for the payment of all charges for services furnished to the Customer. Charges are billed monthly in advance. The Company is not responsible for any telephone charges that may be incurred by the Customer in gaining access to the Company's network.
- C. Bills are payable upon receipt and are deemed past due fifteen (15) days after issuance and posting of invoice. Bills not paid within sixteen (16) days after the date of posting are subject to a one-and-a-half percent (1.5%) late payment charge for the unpaid balance, or the maximum allowable under state law. The late payment date will be prominently displayed on the Customer's bill.
- D. Customer bills shall contain the following information:
1. A description of the service provided,
 2. The monthly recurring and nonrecurring charges for each service provided, any late payment charges, any reconnection fees, and any past due amounts,
 3. The Company's toll-free number for billing inquiries,
 4. The amount or percentage rate of any tax passed on to the Customer,
 5. Any access or other charges imposed by order or at the direction of the Federal Communications Commission, and
 6. The date on which the bill becomes delinquent.

Rule 8 — Disputed Bills

Billing disputes should be addressed to Company's customer service organization via telephone to 1-866-44NEXTG (1-866-446-3984) (408) 719-8510. Customer service representatives are available from 8:30 AM to 5:59 PM Pacific Time. Messages may be left for Customer Services from 6:00 PM to 8:29 AM Pacific Time. Messages will be answered on the next business day, except in the event of an emergency which threatens customer service, in which case Customer Service Staff may be paged. The Company will respond to the Customer complainant within five (5) working days regarding the status of the complaint.

The undisputed portion of the bill must be paid in accordance with Rule 7 of this tariff. If the undisputed portion is not paid in accordance with Rule 7, and the Company has notified the customer by written notice of such delinquency and impending termination, the service will be subject to disconnection.

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 12

In the case of a dispute between the Customer and the Company for service furnished to the Customer, which cannot be settled with mutual satisfaction, the Customer can take the following course of action:

- A. First, the Customer may request, and the Company will perform, an in-depth review of the disputed amount. The undisputed portion and subsequent bills must be paid on a timely basis or the service may be subject to disconnection.
- B. Second, if there is still disagreement over the disputed amount after the investigation and review by a manager of the Company, the Customer may appeal to the Commission.

The contact information of the utilities division of the Commission is:

Arizona Corporation Commission
Utilities Division
1200 West Washington
Phoenix, AZ 85007-2996

- or -

400 West Congress
Tucson, AZ 85701-1347

Phoenix (602) 542-4251; Toll Free 1-800-222-7000 (In-State Only)

Tucson (520) 628-6550; Toll Free 1-800-535-0148 (In-State Only)

Email: mailmaster@cc.state.az.us

Rule 9 — Discontinuance of Service by Company

- A. The Company may discontinue service without notice under the following circumstances:
 - 1. There exists an obvious hazard to the safety or health of the consumer, the general population or the Company's personnel or facilities; or
 - 2. If the Company deems such discontinuance necessary to protect itself or third parties against fraud or to otherwise protect its employees, agents, facilities or services.
- B. The Company may discontinue service upon notice to the Customer under the following circumstances:
 - 1. Customer violation of any terms of any Company tariff and/or violation of the Commission's rules and regulations; or

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

-
2. Nonpayment of any sum due to the Company for service more than thirty (30) days beyond the date of the invoice for such service. In the event the Company terminates service for nonpayment, the Customer may be liable for all reasonable court costs and attorneys fees; or
 3. Customer failure to meet Company's credit and deposit requirements; or
 4. Customer failure to provide Company reasonable access to its equipment and property; or
 5. Customer breach of contract for service between Company and Customer; or
 6. When necessary for Company to comply with an order of any governmental agency having jurisdiction, or any other applicable law; or
 7. Customer is engaging in any unauthorized resale of equipment or service.
- C. Where notice required, the Company will provide the following notice of disconnection:
1. Written notice of the pending disconnection will be rendered not less than five (5) days prior to the disconnection. Notice shall be deemed given upon actual presentation to the customer or upon deposit, first class postage prepaid, in the U.S. Mail to the Customer's last known address.
 2. The notice will contain the following information:
 - (a) The Customer's name and telephone number,
 - (b) The Company rules or regulations that were violated and explanation thereof, or the amount of the bill which Customer has failed to pay in accordance with Company policy, if applicable,
 - (c) The date on or after which service may be terminated, and
 - (d) A statement advising Customer to contact Company at a specific telephone number for information regarding any procedures which the Company may offer to work out a mutually agreeable solution to avoid discontinuance of the service.

D. Restoration of service

The Customer may restore service by full payment in any reasonable manner. There is a minimum \$35.00 charge for restoration of service after disconnection;

if, however, the equipment necessary for service has been removed, the non-recurring fee will apply.

Rule 10 — Cancellation of Service By Customer

Customer may cancel service by providing written notice to Company thirty (30) days prior to cancellation provided, however, that Customer may not cancel RF Transport Services prior to expiration of the initial five (5) year term except for rate increases of five percent (5%) over the Maximum Initial Rates.

Customer is responsible for charges while still connected to the Company's service and the payment of associated local exchange company charges, if any, for service charges.

Any non-recoverable cost of Company expenditures shall be borne by the Customer if:

- A. The Customer orders service requiring special facilities dedicated to the Customer's use and then cancels the order before such service begins, before completion of the minimum period or before completion of some period mutually agreed with the Customer for the non-recoverable portions of expenditures; or
- B. Liabilities are incurred expressly on behalf of the Customer by Company and not fully reimbursed by installation and monthly charges; and
- C. Based on a Customer's order for service, construction has either begun or has been completed, but no service provided.

Rule 11 — Credit Establishment

Each applicant for service shall provide credit information satisfactory to the Company or pay a deposit. Deposits may be avoided if the applicant provides credit history acceptable to the Company. Credit information contained in the applicant's account record may include, but shall not be limited to, account established date, "can-be-reached" number, billing name, and location of current and previous service.

Rule 12 — Prorating of Bills

Any prorated bill shall use a 30-day month to calculate the pro-rata amount. Prorating shall apply only to recurring charges. All nonrecurring and usage charges incurred during the billing period shall be billed in addition to prorated amounts.

Rule 13 — Tariff Available to the Public

A copy of this tariff schedule will be available for public inspection in the Company's business office during regular business hours.

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

Rule 14 — Use of Service

The Company's RF Transport Service may not be used for any unlawful purpose.

The Company strictly prohibits use of the Company's services without payment, including an avoidance of payment by the Customer by fraudulent means or devices, the provision of falsified calling card numbers or invalid calling card numbers to the Company, or any misrepresentation of the identity of the Customer.

Rule 15 — Limitations of Service

Service is offered subject to the availability of the necessary facilities and/or equipment and subject to the provisions of this tariff. Company reserves the right not to provide service to or from a location where the necessary facilities or equipment are not available.

Company reserves the right to discontinue furnishing the service upon written notice to Customer, when necessitated by conditions beyond its control or when Customer is using the service in violation of the provisions of this tariff or in violation of the law.

Title to all facilities provided by Company under these regulations remains in Company's name.

Rule 16 — Interconnection

Service furnished by Company may be interconnected with services or facilities of other common carriers and private systems, subject to the technical limitations established by Company. Any special interface of equipment or facilities necessary to achieve compatibility between the facilities of Company and other participating carriers shall be provided at the Customer's expense.

The Customer is responsible for taking all necessary legal steps for interconnecting Customer-provided terminal equipment or communications equipment with Company's facilities. The Customer shall secure all licenses, permits, rights-of-way and other such arrangements necessary for interconnection.

Rule 17 — Liability of the Company

- A. The liability of the Company for damages arising out of mistakes, omissions, interruptions, delays, or errors, defects or negligence in any of the services or facilities furnished by the Company or by another carrier through the Company up to and including its Demarcation Point (as that term is defined in Rule 20), including any exchange, toll, or private line service provided, supplemental equipment, alphabetical directory listings and all other services, shall in no event exceed an amount equal to the pro rata charges to the Customer for the period during which the services or facilities are affected by the mistake, omission, interruption, delay, error, defect or negligence. In no event shall any mistake,

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

omission, interruption, delay, error, defect or negligence in any one service or facility that affects or diminishes the value of any other service result in liability that exceeds the total amount of the charges to the Customer for all services or facilities for the period affected by the mistake, omission, interruption, delay, error, defect or negligence.

B. Errors in Transmitting, Receiving or Delivering Oral Messages by Telephone

The Company shall not be liable for errors in transmitting, receiving or delivering oral or other messages by equipment or facilities of the Company and connecting utilities.

Rule 18 — Responsibilities of the Customer

- A. The Customer is responsible for: placing any necessary service orders; complying with tariff terms and conditions; assuring that users comply with tariff regulations; and payment of charges for communications originated from the Customer's network.
- B. The Customer is responsible for arranging access to its premises at times mutually agreeable to Company and the Customer when required for installation, repair, maintenance, inspection or removal of equipment associated with the provision of Company services.
- C. The Customer is responsible for maintaining its equipment and facilities in good operating condition. The Customer is liable for any loss, including loss through theft, of any Company equipment installed at the Customer's premises.

Rule 19 — Special Construction

Special construction charges apply where the Company furnishes a facility or service for which a rate or charge is not specified in the Company's tariffs. Charges will be based on the costs incurred by the Company (including return) and may include:

- A. non-recurring charges;
- B. recurring charges;
- C. termination liabilities; or
- D. combinations of any of the above.

Rule 20 — Demarcation Points

The Company will provide facilities, equipment and services to the Demarcation Point. The Demarcation Point designates the end of the Company's network facilities and the

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 17

beginning of the Customer's network. The Company is responsible for the provisioning and maintenance of its facilities, equipment, and services to the Demarcation Point, including those located at that point.

The Customer is responsible for the completion of services beyond the Company's Demarcation Point.

Customer-requested services beyond the Demarcation Point may be provided by the Company at the Customer's expense.

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

**NEXTG APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS
SERVICES**

ATTACHMENT C

**Applicant will file the Affidavit of Publication after this application has been filed, as advised by
Commission staff.**

**NEXTG APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS
SERVICES**

ATTACHMENT E

NextG will offer transport and backhaul services of voice and data signals, primarily for wireless providers. NextG's "RF Transport Services" use optical technology, including multi-wavelength optical technology over dedicated transport facilities to provide telecommunications companies with more efficient transport and greater overall network service options. RF Transport Services connect customer-provided wireless capacity equipment to customer-provided or NextG-provided bi-directional RF-to-optical conversion equipment at a hub facility. The hub facility can be customer or NextG provided. The conversion equipment will allow NextG to accept RF traffic from the customer and then send bi-directional traffic transmission across the appropriate optical networks. At the remote end, NextG or the telecommunications company will provide RF-to-optical conversion equipment to allow bi-directional conversion between optical signals and RF signals. RF signals can be received and radiated at this remote node. NextG will offer service subject to the availability of the necessary facilities and/or equipment.

**NEXTG APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS
SERVICES**

ATTACHMENT F

Key NextG Personnel

John B. Georges

Title: Chairman and Chief Executive Officer for NextG Networks, Inc.

Number of Years: Approximately 15 years

Type of Experience: Sale of wireless networking equipment; telecommunications contract negotiations; electrical engineering

David Cutrer

Title: Chief Technology Officer for NextG Networks, Inc.

Number of Years: Approximately 15 years

Type of Experience: Microcellular communications networks

Joseph M. Veni

Title: Vice President, Sales for NextG Networks, Inc.

Number of Years: Approximately 30 years

Type of Experience: General management, marketing, sales and engineering for wireless companies

Edward Gentile

Title: Vice President, Operations for NextG Networks, Inc.

Number of Years: Approximately 10 years

Type of Experience: Wireless engineering management and network operations including deployments of cellular, paging and microwave systems

Robert Delsman

Title: Vice President, Government Relations and Regulatory Affairs for NextG Networks, Inc.

Number of Years: Approximately 9 years

Type of Experience: Acquisition and administration of right-of-way, franchise, network real estate, and investor-owned utility agreements throughout the United States

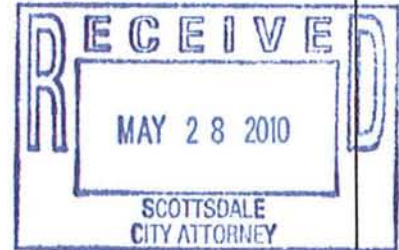
EXHIBIT “B”

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Direct Fax: (602) 734-3860
E-Mail: JWeiss@LRLaw.com

DAVIS WRIGHT TREMAINE LLP
T. Scott Thompson (pro hac vice application pending)
Leslie Gallagher Moylan (pro hac vice application pending)
1919 Pennsylvania Avenue NW, Suite 200
Washington, DC 20006
Telephone: (202) 973-4200

Attorneys for Plaintiff
NextG Networks of California, Inc.



SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

NEXTG NETWORKS OF CALIFORNIA,)
INC. d/b/a/ NEXTG NETWORKS WEST,)

Plaintiff,)

vs.)

CITY OF SCOTTSDALE,)

Defendant.)

No. CV 2010-000832

**PLAINTIFF'S MOTION TO
DISMISS COUNTS II AND III
WITHOUT PREJUDICE**

(Assigned to the Hon. Bethany Hicks)

Plaintiff NextG Networks of California, Inc. d/b/a NextG Networks West
("NextG"), by its undersigned counsel, pursuant to Rule 41(a) hereby moves to dismiss
Counts II and III of its Complaint in this action, *without* prejudice.

Background

In this action, NextG challenges, primarily, the City's Wireless Encroachment Fee, which is an annual charge imposed in exchange for the right to install certain telecommunications facilities in the public rights of way in the City. Arizona law explicitly limits the fees, taxes, and charges that the City may impose on NextG. Under A.R.S. § 9-582(A), the City may impose only a "transaction privilege tax" on the business of providing telecommunications services, one-time license application fees, and one-time construction permit fees. The City has adopted those specifically authorized charges, but also seeks to impose on NextG an additional, unauthorized annual tax on the occupation of the public rights of way. Essentially, the challenged Wireless Encroachment Fee is an

1 additional transaction privilege tax, but in excess of the statutory limit on what the City
2 may impose. The Wireless Encroachment Fee constitutes a tax, fee, or charge on “a
3 telecommunications corporation for the use of a public highway to provide
4 telecommunications services” and for “the privilege of engaging in the business of
5 providing telecommunications services within that political subdivision,” and thus exceeds
6 the lawful fees or taxes the City is authorized to impose under A.R.S. § 9-582(A)(1-4).

7 On January 7, 2010, NextG filed the instant action. Count I of the Complaint states
8 that the Wireless Encroachment Fee imposes fees beyond those authorized by A.R.S. § 9-
9 582 and is therefore void, invalid, and unenforceable.

10 In addition to the Wireless Encroachment Fee, the City has also communicated that
11 NextG would be required to obtain certain public right of way access permits. NextG has
12 not applied for and been denied such permits. In Count II of the Complaint, NextG alleges
13 that the City’s permit requirement and Wireless Encroachment Fee are not competitively
14 neutral and nondiscriminatory and effectively prohibit the ability of NextG to provide
15 telecommunications services in violation of A.R.S. § 9-583 and are therefore void, invalid,
16 and unenforceable. Count III likewise alleges that the permit requirements and Wireless
17 Encroachment Fee are not competitively neutral and nondiscriminatory and effectively
18 prohibit the ability of NextG to provide telecommunications services in violation of 47
19 U.S.C. §253 and are therefore unlawful, preempted, and unenforceable.

20 Argument

21 With this motion, NextG seeks to dismiss Counts II and III, *without* prejudice, and
22 to proceed in this action solely on Count I as to the legality of the Wireless Encroachment
23 Fee under A.R.S. § 9-582. Under Rule 41(a)(2),¹ a plaintiff is entitled to seek a dismissal
24 without prejudice “upon order of the court and upon such terms and conditions as the court
25 deems proper.” Rule 41(a)(2), Ariz. R. Civ. P. “Unless otherwise specified in the order, a
26 dismissal under this paragraph is without prejudice.” *Id.*

27 ¹ Counsel for NextG communicated with counsel for the City, and requested that the City
28 stipulate to dismissal of Counts II and III pursuant to Rule 41(a)(1)(B). The City declined
to stipulate to the dismissal.

1 The decision whether to grant or deny such a motion, and the terms to be imposed,
2 are all within the sound discretion of the court. *Corbin v. Portland Cement Ass'n*, 142
3 Ariz. 421, 424, 690 P.2d 140, 143 (App. 1984). However, the Arizona Supreme Court has
4 stated that "only the most extraordinary circumstances will justify the trial court in
5 refusing to grant a motion by a plaintiff to dismiss without prejudice." *Goodman v.*
6 *Gordon*, 103 Ariz. 538, 541, 447 P.2d 230, 233 (1968). "[T]he test to be applied, in ruling
7 upon a motion to dismiss without prejudice, is whether such dismissal would violate any
8 of the defendant's substantial legal rights." *Penunuri v. Superior Court*, 115 Ariz. 399,
9 565 P.2d 905, 907 (Az. Ct. App. 1977). "A district court should grant a motion for
10 voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer
11 some plain legal prejudice as a result." *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir.
12 2001).

13 NextG does not seek to dismiss Counts II and III for any improper reason and, in
14 fact, such dismissal will preserve party and judicial resources by narrowing the issues
15 before the Court and streamlining the proceedings. There will be no prejudice to the
16 Defendant City as a result of a dismissal of Counts II and III without prejudice. The City
17 will not lose any potential future defense or legal right. "Uncertainty because a dispute
18 remains unresolved" or because "the threat of future litigation . . . causes uncertainty" does
19 not result in plain legal prejudice justifying a dismissal with prejudice. *Id.* Because there
20 could be no prejudice to the City, dismissal of Counts II and III *without* prejudice is
21 proper.

22 Conclusion

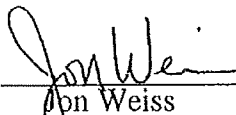
23 For the foregoing reasons, NextG respectfully requests that Counts II and II of the
24 Complaint be dismissed *without* prejudice.

25 A proposed form of Order is attached.
26
27
28

1 RESPECTFULLY SUBMITTED this 27th day of May, 2010.

2 LEWIS AND ROCA LLP

3
4 By



5 Jon Weiss
6 Attorneys for Plaintiff
7 NextG Networks of California, Inc.

8 COPY of the foregoing hand-
9 delivered this 27th day of May, 2010, to:

10 The Honorable Bethany Hicks
11 Maricopa County Superior Court
12 101 West Jefferson
13 Phoenix, AZ 85003

14 COPY of the foregoing
15 mailed this 27th day of May, 2010, to:

16 Robert Bruce Washburn
17 Eric C. Anderson, Esq.
18 3939 North Drinkwater Blvd.
19 Scottsdale, AZ 85251
20 Attorneys for Defendant

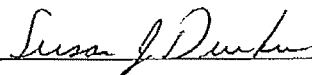
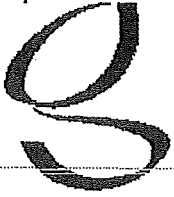
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EXHIBIT “C”



NextG Networks, Inc. 2033 Gateway Place, Suite 500, San Jose, CA 95110-3709 Telephone 408.961.8679 Fax 408.573.6851

NextG Networks

EMPOWERING NEXT GENERATION
WIRELESS NETWORKS

December 23, 2002

Via U.S. Postal Service

CITY OF SAN FRANCISCO
Department of Telecommunications and Information Services
Attn: Lewis W. Loeven III, Executive Director / Chief Information Officer
375 Stevenson Street, 5th Floor
San Francisco, CA 94103

re: *Proposed Neutral-Host Microcellular Telecommunications Permit Agreement
between the City of San Francisco, California, and NextG Networks, Inc.*

Dear Mr. Loeven:

Please accept this letter as the formal application of NEXTG NETWORKS OF CALIFORNIA, INC., a Delaware corporation ("NextG"), for a mobile telecommunications permit or other appropriate form of authorization from the CITY OF SAN FRANCISCO (the "City") to conduct business as a telecommunications company operating with infrastructure located in the City's public ways.

A. Permit Form and Purpose.

NextG hereby requests a non-exclusive mobile telecommunications permit or other appropriate form of authorization from the City of San Francisco in order to install, operate, and maintain fiber optic cable and associated equipment, including microcell and antenna facilities, on, over, and under the public way in the City in connection with the provision of mobile telecommunications and high-capacity telecommunications services relating to mobile telecommunications.

B. NextG Financial and Ownership Information.

Financial and ownership information about NextG is contained in a separate document entitled "NextG Networks, Inc. Company Information Sheet" enclosed with this Permit application. Additional financial information can be supplied to the City upon request.

C. NextG Business Model.

NextG is a facilities-based provider of protocol-agnostic, fiber-aggregated optical-to-radio frequency ("RF") conversion and microcellular repeater services.

*Lewis W. Loewen III, Executive Director/Chief Information Officer
December 23, 2002—page 2*

NextG will make its services available in the City of San Francisco to any wireless carrier that wishes to purchase them to transport its customers' wireless voice and data transmissions between the carrier's BTS and the fiber-fed microcell nodes and associated antennae that NextG seeks to deploy on streetlights and other municipal infrastructure available under the Permit and any additional required authorizations. NextG's services will amplify and extend wireless carriers' RF signals in difficult coverage areas, including the 'urban canyons' of San Francisco. NextG customers will enter into turnkey network services agreements through which NextG will construct and operate fiber-fed microcell networks capable of sustaining up to four (4) carrier customers without unnecessary replication of infrastructure.

D. Regulatory Status.

NextG has applied for a certificate of public convenience and necessity ("CPCN") from the PUC of the State of California in order to offer its services to its CMRS customers in the State of California. NextG will be on the agenda to obtain a CPCN from the PUC during January, 2003. NextG will operate as a telecommunications carrier for the purposes of the Telecommunications Act of 1996.

E. Proposed Location and Number of Attachments.

NextG proposes that its mobile telecommunications permit authorize the installation and operation of its equipment and network in, under, and over the public ways of the City on up to five hundred (500) standard-design prefabricated steel poles, wooden distribution poles, and other available structures throughout the City. NextG will apply for specific site and installation permits and approvals in connection with the buildout of customer orders to attach microcells and antennae to its neutral-host fiber network.

F. Use of Poles and Streets; Trenching.

NextG requests the right to utilize City-owned streetlight poles, traffic light poles, and/or highway sign supports (collectively "poles") for the deployment of microcellular telecommunications equipment (including associated cables, brackets, and antennae) in accordance with the terms, conditions, and authorized purposes for the use and installation of such equipment specified in an appropriate permit agreement or agreements. To the greatest extent possible, NextG will utilize the existing conduit available for the distribution of fiber optic cable in the City. NextG will use every effort to minimize trenching and boring in the streets of the City by feeding fiber optic cabling directly from existing conduit, where available, to the poles to which microcellular nodes and related equipment will be attached pursuant to the mobile telecommunications permit. NextG will observe all applicable rules and regulations of

*Lewis W. Loewen III, Executive Director/Chief Information Officer
December 23, 2002--page 3*

the City and its various departments with respect to permitting and the terms and conditions related to construction of the NextG fiber-fed microcellular network in the City.

G. Technical Specifications and Drawings.

NextG will agree to observe all the terms, conditions, limitations, and design specifications set forth in the applicable permits and agreements with the City in its installation, deployment, and operation of the NextG fiber-fed microcellular network in the City. Additional specifications and technical drawings of representative types of equipment can be supplied upon requested by the City.

Thank you for your prompt and courteous attention to this matter. If you have any questions, please do not hesitate to call me at (510) 845-9681 or (408) 573-5979. I look forward to discussing with you the next steps required to move NextG's permit application forward.

Very truly yours,



Robert L. Delaman, Senior Director, Governmental Relations &
Regulatory Affairs

enclosures

cc Denise M. Brady, Deputy Director
Kirk Wampler
Ronald E. Kramer, Esq.

EXHIBIT “D”

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T. Scott Thompson (pro hac vice)
Leslie Gallagher Moylan (pro hac vice)
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Washington, DC 20006
Telephone: (202) 973-4200

Attorneys for Plaintiff
NextG Networks of California, Inc.

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

NEXTG NETWORKS OF CALIFORNIA,)
INC. d/b/a/ NEXTG NETWORKS WEST,)

Plaintiff,

vs.

CITY OF SCOTTSDALE,

Defendant.)

No. CV 2010-000832

**DECLARATION OF
DAVID CUTRER**

(Assigned to the Hon. George H. Foster)

I, David Cutrer, declare as follows:

I. I am the Chief Technology Officer and Co-Founder of NextG Networks, Inc., which is the parent company of the Plaintiff, NextG Networks of California, Inc. ("NextG"). I make this Declaration in support of NextG's Reply in Support of its Motion for Summary Judgment and in Opposition to the City of Scottsdale's Cross Motion for Summary Judgment in the above captioned action. Unless otherwise indicated, I know the following of my own personal knowledge, and if called as a witness in this action, I could and would testify competently to these facts under oath.

1 2. I hold a Ph.D. and Masters degrees in Electrical Engineering from the
2 University of California at Berkeley, and a Bachelor of Science degree in Electrical
3 Engineering and Applied Physics from the California Institute of Technology.

4 3. Prior to co-founding NextG, I was co-founder, Chief Technology Officer,
5 and Vice President of Engineering for LGC Wireless, Inc. I have been involved in the
6 telecommunications industry, and particularly the wireless telecommunications industry,
7 for over 10 years. Through my academic and employment experience, I have 16 years of
8 experience with the design, construction, and operation of both wireline and wireless
9 telecommunications systems.

10 4. In my role at NextG, I am intimately familiar with the technical aspects of
11 NextG's network and its provision of telecommunications services.

12 5. NextG is a "carriers' carrier." NextG's telecommunications service consists
13 of providing transport of NextG's customers' communications (both voice and data)
14 between points designated by the customer without alteration of the communications.
15 NextG's customers are generally providers of retail wireless telecommunications services,
16 although NextG could provide transport service over its fiber optic lines to other types of
17 customers.

18 6. In most cases, NextG's telecommunications service involves a
19 communication signal handed off from NextG's customer to NextG that NextG then
20 transports over its fiber optic facilities. This handoff and transport takes place at one end
21 at and through equipment configurations called "Nodes" that are located on utility or
22 streetlight poles located in the public rights-of-way or in private utility easements. The
23 equipment comprising a typical "Node" in NextG's network includes a small, low-power
24 antenna, laser and amplifier equipment for the conversion of radio frequency signals
25 ("RF") to optical signals (or from optical to RF), fiber optic lines, and associated
26 equipment such as power supplies.

1 7. NextG does not transmit or receive wireless radio frequency transmissions.
2 Rather, NextG's customers control the wireless transmissions. In the case of a
3 communication coming into a Node from a retail wireless device, NextG's customer hands
4 off the signal at the Node equipment and NextG converts the RF signal to light waves and
5 transports the communications through NextG's fiber optic network to a distant point that
6 is typically, but not always, an aggregation point for NextG's communications called a
7 "Base Station" (or "hub"). The Base Station is a central location that contains such
8 equipment as routers, switches, and signal conversion equipment. The Base Station
9 typically is part of the customer's network and is typically installed in a building located
10 on private property. NextG converts the light waves back to RF signals and hands the
11 communication signals back to its customer at the Base Station, where the
12 communications signals are received by the customer's network. Signals going in the
13 opposite direction (*i.e.* originating at the Base Station and going out) follow the same path
14 only reversed. NextG's service is the transmission from the Base Station to the Node.
15 NextG's customer controls transmission of the wireless radio frequency signal from the
16 antenna out to its customers.

17 8. All wireless transmissions are performed by NextG's customers, who control
18 and are responsible for their licensed proprietary spectrum. Although NextG's service and
19 network incorporates wireless reception devices, NextG is not a wireless or commercial
20 mobile radio service ("CMRS") provider. NextG does not hold or control any wireless
21 spectrum licenses from the FCC.

22 ///

23 ////

24 ////

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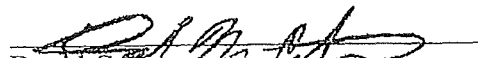
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 16, 2010


David Cultreri